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AUTOALERT, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AUTOALERT, LLC,

Plaintiff,

v.

DOMINION DEALER SOLUTIONS,
LLC; AUTOBASE, INC.; and 110
REYNOLDS, LLC,

Defendants.

AND RELATED COUNTERCLAIMS

) SACV12-01661 JLS (JPRx)

) **AUTOALERT, LLC'S *EX PARTE***
) **APPLICATION TO STAY THIS**
) **ACTION PENDING**
) **RESOLUTION OF IPR AND CBM**
) **PROCEEDINGS IN THE U.S.**
) **PATENT & TRADEMARK**
) **OFFICE OR, IN THE**
) **ALTERNATIVE, TO CONTINUE**
) **THE HEARING ON AUTOBASE'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT BY TWO WEEKS**
) **TO DECEMBER 19, 2014**

) Date: N/A
) Time: N/A
) Ctrm: N/A

) The Hon. Josephine L. Staton

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1 Pursuant to Local Rule 7-19, AutoAlert, LLC hereby applies to this Court
2 *ex parte* for an order staying the case pending the resolution of seven challenges
3 to the validity of AutoAlert's five asserted patents currently pending before the
4 U.S. Patent and Trademark Office ("PTO").

5 This *ex parte* application is based on this Notice of Application, the
6 accompanying Memorandum of Points and Authorities, and any oral argument
7 that may be permitted by the Court. A Proposed Order is being lodged for the
8 Court's consideration.

9 In accordance with Local Rule 7-19.1, on November 4, 2014 AutoAlert
10 conveyed its intent to seek a stay of this action by email to Defendants' counsel,
11 including but not limited to Steven Rocci at SROcci@bakerlaw.com and Henrik
12 Parker at HParker@bakerlaw.com, Baker & Hostetler LLP. On November 5,
13 2014, Mr. Rocci responded by email that he was checking with his clients. On
14 November 6, 2014, having received no further response, AutoAlert's counsel
15 followed up with Defendants' counsel by email, requesting a response by
16 November 7, 2014, and indicating that AutoAlert would seek *ex parte* relief if
17 the parties could not stipulate to a stay.

18 On November 7, 2014, Mr. Rocci left a voicemail for David Jankowski,
19 counsel for AutoAlert, stating that Defendants could not agree to a stay, and he
20 provided his availability that day for a phone call. Soon thereafter, AutoAlert's
21 counsel provided Defendants' counsel with a draft stipulation and draft
22 Proposed Order to effectuate a stay of the case. Counsel then conducted a
23 telephonic meet-and-confer on AutoAlert's proposed relief and a possible *ex*
24 *parte* application. Craig Summers and David Jankowski participated for
25 AutoAlert. Mr. Rocci, Henrik Parker, and David Bournazian participated for
26 Defendants. The parties tried but failed to reach an agreement during the phone

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1 call. Defendants indicated during the call that they will be opposing this *ex*
2 *parte* application.

3
4 Respectfully submitted,

5 KNOBBE, MARTENS, OLSON & BEAR, LLP
6

7
8 Dated: November 10, 2014

By: /s/ David G. Jankowski

Craig S. Summers

9 David G. Jankowski

10 Cheryl T. Burgess

11 Attorneys for Plaintiff/Counterdefendant,
12 AUTOALERT, LLC
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1 **MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION**

2 **I. INTRODUCTION**

3 In 2013, Defendants moved this Court for a stay based on the mere
4 possibility that the Patent Office would institute five Inter Partes Reviews
5 (“IPRs”) filed by Dominion Dealer Solutions. The Court granted that motion
6 and stayed the lawsuit pending resolution of the Patent Office proceedings.
7 Subsequently, the Patent Office denied each of the five IPR petitions, and
8 AutoAlert moved the Court to lift the stay. Defendants opposed lifting the stay
9 based on a separate lawsuit they had filed against the PTO in Virginia and a
10 petition for a writ of mandamus they had filed with the Court of Appeals for the
11 Federal Circuit, each of which sought an order compelling the PTO to institute
12 the IPR reviews that had been denied. Recognizing that the Patent Office was
13 no longer reviewing the validity of AutoAlert’s patents, this Court lifted the
14 stay.

15 Now, the parties are again facing the prospect of simultaneously litigating
16 patent issues relating to AutoAlert’s patents in both this Court and in the PTO.
17 The same factors the Court considered when it granted a stay in 2013 still apply,
18 and the same reasoning the Court used when granting the stay in 2013 still
19 applies. In fact, the need for stay is more apparent now than it was when the
20 Court granted the first stay of this lawsuit. Unlike in 2013, the Patent Office has
21 actually instituted one IPR review and two Covered Business Method (“CBM”)
22 reviews of AutoAlert’s patents. Unlike in 2013, the parties now are past the
23 petition stage and are litigating the validity issues with the PTO. As explained
24 below, it appears very likely that AutoAlert will soon be facing seven separate
25 PTO proceedings (six CBM reviews initiated by DealerSocket, and one IPR
26 review initiated by Dominion) that collectively challenge all of AutoAlert’s five
27 patents on multiple invalidity grounds.

28 / / /

1 The ongoing PTO proceedings may greatly simplify this lawsuit. If the
 2 PTO decides that all of AutoAlert's challenged patent claims are invalid, and
 3 those decisions are affirmed on appeal, this lawsuit will go away in its entirety.
 4 Alternatively, if some or all of the challenged patent claims are upheld, the
 5 issues in this lawsuit will be simplified. AutoAlert thus respectfully submits
 6 that a stay of the litigation in this Court will avoid potentially unnecessarily
 7 waste of both judicial resources and party resources.

8 If the Court declines to stay this action, then AutoAlert respectfully
 9 requests in the alternative that the hearing on AutoBase's motion for summary
 10 judgment (Docket No. 109) be continued to December 19, 2014, so that the
 11 deadline for AutoAlert's opposition is extended by two weeks to November 28,
 12 2014. This continuance is necessary to allow AutoAlert to have sufficient time
 13 to oppose the summary judgment motion and to also take into account
 14 AutoAlert's related Patent Owner Responses that are due in December in the
 15 PTO on DealerSocket's CBM challenges on the same issue.

16 **II. BACKGROUND**

17 **A. Procedural Posture**

18 On October 1, 2012, AutoAlert filed its Complaint against the Dominion
 19 Defendants alleging infringement of five AutoAlert patents. (Docket No. 34.)

20 **1. The First Stay Of This Lawsuit**

21 On March 28, 2013, Dominion filed five petitions with the United States
 22 Patent and Trademark Office for *inter partes* review ("IPR") of each of the
 23 patents-in-suit. On April 2, 2013, Dominion filed a motion to stay the action
 24 "(a) until the PTO decides whether or not to grant the pending IPR requests; and
 25 (b) if one or more of those requests are granted, until any such IPRs are finally
 26 resolved." (Docket No. 23). On May 22, 2013, this Court granted the motion.
 27 (Docket No. 41).

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1 In August 2013, the Patent Office denied all five IPR petitions. In
2 October 2013, the Patent Office denied Dominion's five requests for
3 reconsideration. At that point, AutoAlert sought Defendants' agreement to
4 jointly seek a lifting of the stay. Defendants declined, contending that they were
5 entitled to further "appeal" the denial of the IPR petitions. On December 4,
6 2012, AutoAlert filed a motion to lift the stay (Docket No. 44), which the Court
7 granted on January 1, 2014, finding that "[n]either the Court's Stay Order nor
8 Defendants' motion to stay contemplated continuing the stay after the denial of
9 a request for review." (Docket No. 53.)

10 **2. The Current State Of This Lawsuit**

11 On February 13, 2014, the Court entered a Scheduling Order and Order
12 Re Claim Construction Briefing. (Docket No. 55.) The parties conducted claim
13 construction briefing in July and August, and the Court held a Claim
14 Construction Hearing on September 29, 2014. (Docket Nos. 77–82, 88–89, 99.)
15 The parties also conducted briefing on 110 Reynolds' motion for summary
16 judgment of invalidity under 35 U.S.C. §112 for indefiniteness in August and
17 September, which the Court also addressed at the Claim Construction Hearing.
18 (Docket Nos. 83–86, 95–99.) The Court has not yet issued a claim construction
19 order or ruled on the summary judgment motion for invalidity based on
20 indefiniteness.

21 On October 31, 2014, Autobase filed a motion for summary judgment of
22 invalidity under 35 U.S.C. §101 for lack of patent eligibility. AutoAlert's
23 opposition is due on November 14, 2014.

24 Fact discovery is set to close on March 13, 2015, and expert discovery is
25 set to close on May 22, 2015. Trial is set for August 4, 2015, approximately 10
26 months away. (Docket No. 55.)

27 The parties are in the midst of fact discovery and no depositions have
28 been taken.

B. The Pending Petitions For Inter Partes Review And Covered Business Method Review Of AutoAlert's Patents

When the Court first stayed this lawsuit in 2013, it did so in response to Dominion's filing in the PTO of five IPR petitions directed at AutoAlert's patents. Since the denial of those petitions, Dominion and third party DealerSocket have together filed nine additional petitions seeking PTO review of AutoAlert's patents. Of those nine additional petitions, the PTO has dismissed two and granted three, leaving four more to be decided.

In early October, the PTO issued a Decision instituting an IPR review of AutoAlert's U.S. Patent No. 8,396,791 ("791 patent") (PTO Case No. IPR2014-00684). Defendants have already provided the Court with a copy of the Decision. (Docket No. 100-1.)

Later in October, based on petitions filed by DealerSocket, the PTO issued Decisions instituting CBM reviews of AutoAlert's U.S. Patent Nos. 8,095,461 ("461 patent") and 8,396,791 ("791 patent"). AutoAlert and Defendants jointly submitted copies of those PTO Decisions to the Court. (Docket Nos. 106, 108.)

The PTO also has pending before it four additional petitions filed by DealerSocket that seek to institute CBM reviews of AutoAlert's U.S. Patent No. 7,827,099 ("099 patent"); U.S. Patent No. 8,005,752 ("752 patent"), and U.S. Patent No. 8,086,529 ("529 patent"). Collectively, AutoAlert's patents are presently being challenged through the following PTO proceedings:

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PTO Case No.	Patent	Grounds	Status With PTO
IPR2014-00684	'791	35 U.S.C. §103	Review Instituted
CBM2014-00132	'461	35 U.S.C. §§101, 112	Review Instituted
CBM2014-00139	'791	35 U.S.C. §§101, 112	Review Instituted
CBM2014-00146	'529	35 U.S.C. §§101, 112	Petition Pending
CBM2014-00201	'099	35 U.S.C. §112	Petition Pending
CBM2014-00202	'099	35 U.S.C. §101	Petition Pending
CBM2014-00203	'752	35 U.S.C. §§101, 112	Petition Pending

**C. Judge Otero Has Already Stayed AutoAlert's Co-Pending Lawsuit
Against DealerSocket Based On The Pending CBM Proceedings**

AutoAlert's lawsuit against the Dominion Defendants is one of two lawsuits AutoAlert filed for patent infringement. The second lawsuit, filed against DealerSocket, is pending in this Court before Judge S. James Otero. (SA CV 13-00657 SJO (JPRx)). In addition to filing CBM petitions, DealerSocket also filed a motion with Judge Otero to stay AutoAlert's patent infringement lawsuit. (SA CV 13-00657, Docket No. 148). On July 18, 2014, Judge Otero granted that motion and stayed the DealerSocket litigation pending resolution of DealerSocket's CBM petitions. (SA CV 13-00657, Docket No. 190.)

As noted above, DealerSocket currently has two instituted CBM reviews pending against AutoAlert's patents, as well as four pending petitions for CBM review. The instituted CBM review of the '791 patent is based on (1) alleged indefiniteness with respect to the claim term "may affect whether it is favorable," and (2) alleged patent-ineligible subject matter under Section 101. (Docket No. 100-1, Exhibit A.) The instituted CBM review of the '461 patent is based on (1) alleged indefiniteness of the claim term "may affect whether it is favorable," (2) alleged patent-ineligible subject matter under Section 101; and

(3) alleged lack of written description for the claim term “retrieving in real-time changed information.” (Docket No. 108, Exhibit A.) DealerSocket’s four pending CBM petitions raise the same grounds for invalidity as the grounds instituted by the PTO on the ’791 and ’461 patents, except directed at AutoAlert’s ’529, ’099, and ’752 patents.

III. EX PARTE RELIEF IS APPROPRIATE

Ex parte relief is necessary to avoid the growing expense and expenditure of judicial and party resources in litigating issues simultaneously before the PTO and in this Court. Specifically, AutoAlert seeks to avoid the substantial costs associated with opposing AutoBase’s summary judgment motion on invalidity under 35 U.S.C. §101, when the same issues are currently pending before the PTO in multiple CBM proceedings. AutoAlert’s opposition to that motion is due on November 14, 2014, and a regularly noticed motion would not be decided in time to provide the relief AutoAlert requests.

In addition, the Court has not yet issued rulings on claim construction or on 110 Reynolds’s motion for summary judgment of indefiniteness. The CBM proceedings also address common indefiniteness challenges, and, accordingly, an immediate stay of the litigation will conserve the Court’s resources.

IV. THE ACTION SHOULD BE STAYED PENDING THE PTO PROCEEDINGS

Since the filing of this lawsuit, AutoAlert has been facing a series of coordinated and relentless attacks on its patents in the PTO. Between Dominion and DealerSocket, *fourteen* PTO petitions have been filed. AutoAlert has been successful in obtaining dismissal of seven petitions, a remarkable achievement given that the vast majority of such petitions have been granted.

When AutoAlert opposed Dominion’s motion to stay in 2013, the IPR petitions were merely filed and no review proceedings had been instituted. Within just the past few weeks, however, the situation has changed significantly

1 because the PTO has now granted two CBM petitions filed by DealerSocket.
2 The PTO's reasons for granting those two petitions applies to the remaining four
3 DealerSocket petitions that will be decided within the next few months. Thus, it
4 now appears highly likely that the validity of all five AutoAlert patents will be
5 reviewed by the PTO.

6 Although AutoAlert would prefer to continue to pursue infringement of
7 its patents in this Court, the reality is that the PTO has decided to review the
8 validity of the asserted patents. And although it is rare for a patent owner to
9 request a stay of its own litigation, it simply does not make sense for AutoAlert
10 to expend resources defending its patents simultaneously in two forums. It also
11 does not make sense for this Court to expend additional resources construing the
12 patent claims or deciding the pending motions for summary judgment, which
13 address issues that the PTO will now also be addressing.

14 In granting the Dominion Defendants previous motion to stay the case,
15 this Court noted that "[t]here is a liberal policy in favor of granting motions to
16 stay proceedings pending the outcome of USPTO reexamination or reissuance
17 proceedings." *AutoAlert, Inc. v. Dominion Dealer Solutions, LLC*, No. SACV
18 12-1661-JST, 2013 WL 8014977, at *1 (C.D. Cal. May 22, 2013) (internal
19 quotations omitted). Indeed, the America Invents Act ("AIA") expressly
20 contemplates the stay of concurrent patent litigation during CBM review. AIA
21 § 18(b). When a party seeks a stay to patent litigation pending CBM review
22 Congress has provided that a court should consider the following four factors:

23 (1) whether a stay, or the denial thereof, will simplify the issues in
24 question and streamline the trial;

25 (2) whether discovery is complete and whether a trial date has been set;

26 (3) whether a stay, or the denial thereof, would unduly prejudice the
27 nonmoving party or present a clear tactical advantage for the moving party; and

28 / / /

1 (4) whether a stay, or the denial thereof, will reduce the burden of
2 litigation on the parties and on the court.

3 AIA § 18(b)(1); *VirtualAgility Inc. v. Salesforce.com, Inc.*, 759 F.3d 1307, 1309
4 (Fed. Cir. 2014). Under this statutory framework “[i]t is congressional intent
5 that a stay should only be denied in extremely rare instances.” 157 CONG.
6 REC. S1363 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer).

7 The four-factor statutory structure and the traditional framework used by
8 courts to consider stays is similar, with the exception that the statutory structure
9 adds the fourth factor regarding whether a stay will reduce the burden of
10 litigation. *See, Semiconductor Energy Lab. Co. v. Chimei Innolux Corp.*, No.
11 SACV 12-21-JST JPRX, 2012 WL 7170593, at *1 (C.D. Cal. Dec. 19, 2012).

12 **A. Granting A Stay Will Simplify The Issues In Question And**
13 **Streamline Trial**

14 Here, all five patents-in-suit are either the subject of an instituted CBM or
15 a pending CBM petition. One patent is also subject to an instituted IPR. All
16 causes of action stem directly from those five patents. As Dominion pointed
17 out when seeking a stay, courts have found that staying litigation pending a PTO
18 review is efficient for numerous reasons, including:

- 19 (i) gaining the benefit of the PTO’s expertise;
20 (ii) alleviating discovery problems related to the prior art;
21 (iii) reducing the complexity and length of trial by relying on the record
22 of the reexamination;
23 (iv) limiting the issues, defenses, and evidence;
24 (v) possibly encouraging settlement; and
25 (vi) the possible dismissal of the suit if the patent is declared invalid.

26 *Pegasus Dev. Corp. v. Directv, Inc.*, No. CV-00-1020-GMS, 2003 U.S. Dist.
27 LEXIS 8052, *5-6 (D. Del. May 14, 2003). These same factors apply equally to
28

1 the CBM and IPR context, and in this case all of the listed benefits will come to
2 fruition with a stay.

3 The Court will be able to rely upon the expertise of the PTO in these
4 matters. The PTO employs trained experts who can objectively evaluate the
5 patents and invalidity grounds asserted in the petitions. These experts
6 understand the technology (without the assistance of subjective experts from the
7 litigation), are experienced in determining whether the prior art invalidates any
8 of the asserted claims, and can complete the invalidity analysis in a more cost
9 effective and efficient manner than the Court.

10 This Court and the parties will also benefit from the outcome of the PTO
11 proceedings even if the challenged claims are found to be valid by the PTO.
12 Several of the issues before the PTO overlap with issues before this Court. For
13 example, the PTO will be considering alleged patent-ineligible subject matter
14 under Section 101, an issue that is also the subject of a summary judgment
15 motion filed by Autobase. The PTO will also be considering alleged
16 indefiniteness with respect to the claim term “may affect whether it is
17 favorable,” which is the subject of 110 Reynolds’ motion for summary
18 judgment on indefiniteness. The PTO’s expertise and ultimate decision on these
19 issues will focus and simplify issues in the district court, and may encourage
20 settlement because the parties will better understand the invalidity issues.

21 The PTO proceedings will undoubtedly simplify this case because their
22 very purpose is to clarify the claims of the patents at issue and whether or not
23 they are eligible for patenting. Dominion identified these same factors in
24 support of its earlier motion to stay, and they are equally relevant now.

25 **B. This Action Is Not In A Late Stage, Favoring Grant Of A Stay**

26 A stay is appropriate here because even though this case was initially
27 filed some time ago, the previous stay has kept this case in its early stages.
28 Neither party has taken a deposition yet. Fact discovery is scheduled to

1 continue for four more months to March 13, 2015, and expert discovery will not
2 be complete until May 22, 2014. (Docket No. 55). While a trial date has been
3 set in August 2015, that date is nearly a year away.

4 As Dominion pointed out when seeking a stay, this Court has repeatedly
5 granted stay motions pending reexamination proceedings when actions were
6 comparatively young. See, e.g., *Symantec Corp. v. M86 Security, Inc.*, No.
7 8:10-cv-01513 (motion filed Jan. 31, 2011; April 21, 2011 Order – Docket No.
8 23-2, Ex. G – at 2) (“the Court has yet to set dates for discovery, pre-trial
9 motions, or trial, and the only discovery that has occurred thus far has been the
10 parties’ exchange of initial disclosures pursuant to Rule 26(f)”); *Inogen, Inc. v.*
11 *Inova Labs, Inc.*, No. SACV 11–1692–JST, 2012 WL 4748803 (C.D. Cal.
12 March 20, 2012) (defendant’s Motion stating that Inogen had not sought a
13 preliminary injunction, no discovery had been issued, no discovery was
14 exchanged, no depositions were taken or scheduled, no subpoenas were severed,
15 no protective orders were entered, the parties had not started work on claim
16 construction nor had the Court schedule claim construction briefings or
17 hearings, and no trial date was set, and the Court granting the stay despite the
18 fact that “the parties just conducted their initial Rule 26(f) conference on
19 February 23, 2012”); see also *Industry Access v. CoreLogic, Inc.*, No. 8:11-cv-
20 00473 (motion filed Dec. 15, 2011; Feb. 28, 2012, Order – Docket No. 23-2, Ex.
21 F) (parties’ joint stipulation to stay proceedings granted despite the fact that the
22 parties had exchanged initial disclosures, and a trial date was set by the court, as
23 no significant discovery had taken place).

24 In *Semiconductor Energy Lab.*, this Court found that this factor weighed
25 in favor of a stay pending a series of the new IPR proceedings even though the
26 case was “not in its infancy,” as a trial date had been set and the parties had
27 “expended considerable resources” on discovery. 2012 WL 7170593 at *5.

28 / / /

1 Further, the parties will soon be spending considerable time, money, and
2 other valuable resources if no stay is granted as depositions and expert
3 discovery swing into action. Reexamination provides “an inexpensive,
4 expedient means of determining patent validity which, if available and practical,
5 should be deferred to by the courts . . . especially where the infringement
6 litigation is in the early stages.” *Softview Computer Prods. Corp. v. Haworth,*
7 *Inc.*, No. 97-cv-8815, 2000 U.S. Dist. LEXIS 11274, at *4-*5 (S.D.N.Y. Aug.
8 10, 2000) (granting stay pending PTO’s determination on reexamination;
9 internal citations omitted).

10 While both the parties and this Court have done work in this case, the
11 potential for substantial future costs remains very high. Accordingly, the
12 second factor favors granting a stay.

13 **C. A Stay Will Not Cause Undue Prejudice Or Tactical Disadvantage To**
14 **The Dominion Defendants**

15 Here, the clear and obvious advantage of a stay is the added overall
16 efficiency to the case. Any delay due to staying the case pending the PTO
17 proceedings will be no more burdensome or prejudicial on the Dominion
18 Defendants than the delays caused by their own conduct. Dominion already
19 successfully stayed the case once pending their first round of failed IPR
20 petitions. When those petitions were unsuccessful at the PTO, Dominion sought
21 to prolong the stay by refusing to jointly move to lift the stay. Dominion has
22 now changed its tune with respect to a stay, but will suffer no undue prejudice
23 as a result of one.

24 If the requested stay is denied and the litigation proceeds parallel to the
25 PTO proceedings, there is a considerable likelihood that significant aspects of
26 the case may have to be re-litigated after the claims are modified; or, if all of the
27 asserted claims are cancelled during the IPR or CBMs, the entire case would be
28 unnecessary. *Bausch & Lomb Inc. v. Alcon Lab., Inc.*, 914 F. Supp. 951, 953

(W.D.N.Y. 1996) (if “this Court were to deny the stay and proceed to trial, it is possible that the time, resources, and significant efforts of all those involved in such a trial would be wasted”). In other words, if the Court allows this case to move forward with respect to patents being reviewed by the PTO, then the Court is taking a risk relating to its own judicial economy. The petitions could result in cancellation of all of the asserted claims, and will likely at least affect their breadth, scope and interpretation. It would be inefficient to construe the terms of the patents, and then expend time, energy and resources to litigate them while the PTO proceedings continue. Litigating the patents, when their claims and terms will likely change due to the PTO proceedings, makes little sense. *See Echostar Techs. Corp. v. TiVo, Inc.*, No. 05cv81, 2006 WL 2501494, at *4 (E.D. Tex. July 14, 2006) (“It would be an egregious waste of both the parties’ and the Court’s resources if the Markman and summary judgment proceedings went forward and the claims were subsequently declared invalid or were amended as a result of the reexamination proceeding”).

Dominion found this same rationale compelling in its previous motion to stay, even before any PTO review had been instituted, and it is even more compelling now where the PTO has decided to conduct a review and AutoAlert has no objection to the stay.

D. A Stay Will Reduce The Burden Of Litigation On The Parties And On The Court

The fourth factor, whether a stay would reduce the burden of litigation, largely overlaps with the first factor, but still must be considered separately. *VirtualAgility*, 759 F.3d at 1313. The addition of the fourth factor in effect eases movant's task of demonstrating the need for a stay. *Credit Acceptance Corp. v. Westlake Servs., LLC*, No. CV 13-01523 SJO MRNX, 2013 WL 7144391, at *2 (C.D. Cal. Dec. 30, 2013). A stay will generally reduce the burden of litigation on the parties and the courts. *Credit Acceptance*, 2013 WL

1 7144391 at *6.

2 A stay here would clearly ease the burden of litigation on both parties and
3 the court. The parties would avoid the unnecessary expense of litigating several
4 of the same issues on two fronts. The court would avoid the risk of performing
5 duplicative work with the PTAB. Further, should the PTAB invalidate one or
6 more claim, the burden of litigation following the CBM review could be greatly
7 reduced, or even eliminated.

8 **V. IF A STAY IS NOT GRANTED, THEN, IN THE ALTERNATIVE,**
9 **THE HEARING ON AUTOBASE'S SUMMARY JUDGMENT MOTION**
10 **UNDER 35 U.S.C. §101 SHOULD BE CONTINUED**

11 As noted above, AutoAlert's opposition to AutoBase's motion for
12 summary judgment under 35 U.S.C. §101 for lack of patent eligible subject
13 matter (Docket No. 109) is due this Friday, November 14, 2014. If the Court
14 declines to stay this action, then AutoAlert respectfully requests that the hearing
15 on AutoBase's motion be continued by two weeks to December 19, 2014, so
16 that AutoAlert's opposition would not be due until November 28. This
17 continuance is necessary to allow AutoAlert to have sufficient time to oppose
18 the motion for summary judgment and to also take into account AutoAlert's
19 related Patent Owner Response that is due in December in the PTO on
20 DealerSocket's CBM challenges on the same issue.

21 On the morning of this filing, Henrik Parker sent an email to AutoAlert's
22 counsel indicating that a hearing on December 19, 2014, presents a personal
23 hardship for the involved counsel for the Defendants. Mr. Parker did not
24 indicate the nature of the hardship or the identity of the attorney to which he was
25 referring. Regardless, if the Court deems it necessary, AutoAlert is agreeable to
26 the Court continuing the hearing on AutoBase's motion for summary judgment
27 to a date later than December 19, 2014.

28 / / /

VI. CONCLUSION

For the reasons provided above, AutoAlert respectfully requests that the Court stay this lawsuit pending resolution of the seven pending PTO proceedings against AutoAlert's asserted patents.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 10, 2014 By: /s/ David G. Jankowski

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